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# In the Supreme Court of the United States

LARRY G. MASSANARI,
ACTING COMMISSIONER OF SOCIAL SECURITY,
*Petitioner*,

v.

SIGMON COAL COMPANY, INC., and
JERICOL MINING, INC.,
*Respondents*.

**On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit**

## BRIEF OF THE TRUSTEES OF THE UMWA COMBINED BENEFIT FUND AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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## QUESTION PRESENTED

Whether, under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.*, the Commissioner of Social Security may assign beneficiaries of the UMWA Combined Benefit Fund to an employer that is the successor in interest to a defunct coal operator that formerly employed the retired miners in question.

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## INTEREST OF THE *AMICI CURIAE*

The UMWA Combined Benefit Fund ("Combined Fund") is a statutory health care trust created by Congress under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701 *et seq.* ("Coal Act").[1] The Coal Act was passed to remedy a crisis in the funding of the preexisting collectively bargained multiemployer retiree health benefit plans in the coal industry, a crisis that threatened to deprive retired miners and their dependents of promised health benefits. Under Section 9702 of the Coal Act, the preexisting UMWA benefit plans were merged into the newly created Combined Fund, and the Combined Fund began providing retiree health coverage as of February 1, 1993. The Trustees of the Combined Fund, chosen in accordance with Section 9702 of the statute, are charged with the responsibility for administering the Combined Fund, collecting health care premiums from assigned operators, and providing health coverage to the Combined Fund's beneficiaries.[2]

The issue in this case is whether the Coal Act permits the Social Security Administration ("SSA") to assign Combined Fund beneficiaries to the "successor in interest" of an out-of-business "signatory operator," as those terms are used in the Coal Act. Pet. I. That issue is of substantial and immediate concern to the Combined Fund. Since February 1993, the

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[1]This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than the Combined Fund, its Trustees, or its counsel, has made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief. Their letters of consent are on file with the Clerk of this Court.

[2]The Trustees of the Combined Fund are William P. Hobgood, Michael H. Holland, Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carl E. Van Horn, and Gail R. Wilensky.

Combined Fund has provided benefits for all of the beneficiaries assigned to respondent Jericol Mining, Inc. ("Jericol"), despite the fact that Jericol and its related person, respondent Sigmon Coal Company ("Sigmon"), have failed in significant part to pay for those benefits.[3] The decision of the panel majority in the court below has prevented the Combined Fund from collecting the balance of the premiums owed by respondents, and, if permitted to stand, could substantially alter the provision of health care in the manner Congress intended under the Coal Act.

The Combined Fund seeks to ensure that the base of contributing employers remains as broad as possible, so as to prevent an ever-increasing burden from falling upon an ever-declining group of employers, which, in turn, could lead to a repeat of the crisis that Congress sought to resolve when it enacted the Coal Act in the first place. If the decision below stands, there is a serious possibility that companies liable under the Coal Act would seek to use the device of a successor firm to evade their statutory obligations. Assigned operators could terminate their Coal Act liability simply by changing the ownership of their working assets, distributing their proceeds to shareholders, and continuing their operations in a new corporate form. If this were to occur, the health benefits for the affected beneficiaries would be financed by an ever-shrinking group of responsible companies with no relationship to the beneficiaries. This would go a long way toward re-creating the very sort of dwindling funding base that Congress sought to rectify through the Coal Act.

The Trustees accordingly have a strong interest in supporting the position of petitioner in this case.

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[3]SSA assigned certain Combined Fund beneficiaries to Jericol as a direct successor in interest to a defunct signatory operator, Shackleford Coal Company ("Shackleford"). Pet. App. 11a.



## STATEMENT OF THE CASE

This case concerns retiree health care in the coal industry. The question presented arises from the congressional response to a financial crisis that threatened to render the collectively bargained multiemployer health care plans insolvent and disrupt the provision of lifetime health care benefits that more than 100,000 retired and disabled coal miners and their families legitimately had come to expect. This Court previously addressed the turbulent history of health care for retired coal miners and their dependents, including the financial crisis encountered by the industry's contractual retiree health care system, in *Eastern Enterprises v. Apfel*, 524 U.S. 498, 504-15 (1998)(plurality opinion).[4] A brief summary of the relevant historical events and the essential elements of the Coal Act places in proper context the question of statutory interpretation presented here.

### A. Health Care in the Coal Industry Prior to the Coal Act

The first coal industry multiemployer benefit plan was created in 1946 by the historic Krug-Lewis Agreement, an

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[4]An in-depth discussion of the financial crisis leading to the Coal Act is also contained in the Coal Commission Report: A Report to the Secretary of Labor and the American People (Nov. 1990). This report was reprinted, and its findings were discussed, in *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing before the Subcomm. on Medicare and Long-Term Care of the Senate Comm. on Finance*, 102d Cong. (1991). A copy of the Coal Commission Report was attached to the Combined Fund's *amicus curiae* brief in the court of appeals, and a copy has been lodged with the Clerk of this Court.

agreement between the United Mine Workers of America ("UMWA") and the United States that settled a national strike during which the federal government seized virtually all the nation's coal mines. *Eastern*, 524 U.S. at 505. Shortly after the Krug-Lewis Agreement, the mines returned to private control, and the UMWA and coal operators entered into the 1947 National Bituminous Coal Wage Agreement ("1947 NBCWA"). The 1947 NBCWA established the UMWA Welfare and Retirement Fund (the "1947 W&R Fund"), which was financed by a royalty on coal production. *Id.* at 505-06.

A continuing disagreement over benefits led to execution of the 1950 NBCWA. It created the UMWA Welfare and Retirement Fund of 1950 (the "1950 W&R Fund"). *Eastern*, 524 U.S. at 506. The 1950 W&R Fund, like its predecessor, operated on a pay-as-you-go basis, providing benefits from a fixed amount of royalties. It continued to provide health care benefits to UMWA miners and their dependents until 1974.

Under the 1974 NBCWA, partly in response to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA"), and its specific funding and vesting requirements for pension plans, the UMWA and the Bituminous Coal Operators' Association, Inc. ("BCOA")[5] agreed to divide the 1950 W&R Fund into four separate multiemployer plans. *Eastern*, 524 U.S. at 509. Two of the four new plans provided pension benefits to retired miners. The other two plans, the 1950 Benefit Plan and the 1974 Benefit Plan, provided health benefits to retired miners. The 1950 Benefit Plan provided health benefits to eligible UMWA miners who left covered service in the coal industry before 1976. The 1974 Benefit Plan

[5]The BCOA is a multiemployer bargaining association that represents various large and small bituminous coal operators in collective bargaining with the UMWA.



provided health benefits for miners who left covered service in 1976 or later. The 1974 Benefit Plan also provided health benefits to the active work force.

Although retiree health benefits had been provided by the UMWA Funds since the 1940's, the 1974 NBCWA was the first agreement between the UMWA and BCOA that referred expressly to health benefits for retired miners. *Eastern*, 524 U.S. at 509. The agreement referred explicitly to lifetime health benefits for retirees, disabled miners, and spouses. Despite this change, however, the manner in which employers were required to contribute to the multiemployer plans remained unaltered. A fixed amount of royalties continued to be the only required contribution from participating employers. *Id.*

In 1978, the UMWA and BCOA restructured the industry's contractual health care system in response to financial problems caused by a variety of factors, including a decline in the amount of coal produced, the retirement of a generation of miners, and the rapid escalation of health care costs. *Eastern*, 524 U.S. at 510-11. The signatory employers to the 1978 NBCWA agreed to establish individual employer health plans to provide benefits to their own active employees and retirees who left covered service in 1976 or thereafter. The primary responsibility for providing health care for such retirees and the active work force thus shifted from the 1974 Benefit Plan to the individual coal operators that were signatory to the 1978 NBCWA and successor agreements. The 1950 Benefit Plan continued to provide health benefits to persons who left covered employment before 1976, and the 1974 Benefit Plan was retained as an "orphan" plan to provide retiree health benefits to UMWA retirees who left covered service in 1976 or thereafter and whose last employer had gone out of business. *Id.* The 1978 NBCWA, like the 1974 NBCWA, also referred explicitly to lifetime retiree health benefits. Indeed, every NBCWA since

1974 has contained such express references to lifetime health coverage.

### B. The Crisis in the UMWA Plans and the Coal Commission Report

Despite the changes made to the multiemployer plans in 1978, serious funding problems persisted. *Eastern*, 524 U.S. at 511. During the years immediately preceding enactment of the Coal Act, these problems severely threatened the financial stability of the 1950 and 1974 Benefit Plans. Several factors led to this crisis. The number of signatory operators declined while the cost of providing medical care dramatically increased, thus placing a greater and greater financial burden upon fewer and fewer employers. *Id. See also Unity Real Estate Co. v. Hudson*, 178 F.3d 649, 654 (3d Cir.), *cert. denied*, 528 U.S. 963 (1999) ("By 1990, contributions from a shrinking number of coal producers proved insufficient to fund the four benefit plans, and those plans were awash in red ink."). As a result, "[b]y the late 1980s, the UMWA Plans were facing insolvency," and, as in the past, "the issue of continued, stable funding for retiree benefits contributed to protracted labor unrest." *Holland v. Keenan Trucking, Inc.*, 102 F.3d 736, 738 (4th Cir. 1996).

One of the most serious labor disputes was a ten-month strike by the UMWA against the Pittston Coal Company and related entities. The prolonged Pittston dispute was resolved only after Secretary of Labor Dole intervened and facilitated a settlement. As part of this settlement, Secretary Dole established an advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"), an industry-wide commission authorized to analyze the retiree health care crisis and to recommend solutions. *Eastern*, 524 U.S. 511-12.



The Coal Commission issued its findings and recommendations on November 5, 1990. Observing that retiree health benefits should be continued and that the collective bargaining process was inadequate to provide a long-term solution, the Commission recommended:

> the imposition of a statutory obligation to contribute on current and past signatories, mechanisms to prevent future dumping of retiree health obligations, authority to utilize excess pension assets and the implementation of state-of-the-art managed care and cost containment techniques.

Coal Comm. Rpt. at 60.

### C. The Coal Act: Congress' Solution to the Health Care Crisis in the Coal Industry

Following the Coal Commission's report, Congress conducted its own intensive examination of the health care crisis in the coal industry. After two years of deliberation, Congress enacted the Coal Act.

The statute created two new trust funds for the provision of health care benefits to retired miners and their dependents. The first of these funds, the Combined Fund, is involved here.[6] Under Section 9702 of the Coal Act, the 1950 and 1974

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[6]The Coal Act also required the continuation of the existing collectively bargained individual employer plans, and it created the UMWA 1992 Benefit Plan for specified beneficiaries not eligible to receive coverage from the Combined Fund. 26 U.S.C. §§ 9711, 9712.

UMWA Benefit Plans were merged into the Combined Fund as of February 1, 1993. *See* 26 U.S.C. § 9702. The Combined Fund now provides health benefits to coal industry retirees and their dependents who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the UMWA 1950 or 1974 Benefit Plan. 26 U.S.C. § 9703(a), (b)(1), (e), (f).

The Coal Act reflects Congress' finding that:

> it is necessary to modify the private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037 (codified in 26 U.S.C. § 9701 (historical note) (1994)). *See also Eastern*, 524 U.S. at 514.

Congress intended that "the largest possible number of beneficiaries in the Plans be assigned to a specific or designated company." *See* 138 Cong. Rec. S17605 (daily ed. Oct. 8, 1992) (reproducing proposed conference committee report). It also intended that an assigned beneficiary should remain "the responsibility of a particular operator, and that the number of unassigned beneficiaries should be kept to an absolute minimum." *Id.*

**D. The Structure of the Coal Act**

To accomplish its stated purpose, Congress adopted a financing arrangement for the Combined Fund under which employers that were signatory to one or more NBCWAs are required to share the burden of financing Combined Fund health



benefits for the affected retirees and their dependents. Each employer's annual liability to the Combined Fund is based on the number of Combined Fund beneficiaries assigned to it by SSA under Section 9706 of the Act.

The Coal Act thus reflects the congressional decision that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." *See* 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992) (reproducing proposed conference committee report). *See also Eastern*, 524 U.S. at 514.

The Coal Act also addressed the financing of health care coverage for true "orphan" retirees — Combined Fund beneficiaries whose former employers (and their related companies) are no longer in business and who therefore could not be assigned under Section 9706 of the statute. Congress provided that the cost of providing health benefits to such retirees and their dependents should be paid through a combination of funds transferred from the UMWA 1950 Pension Plan, public money, and contributions from signatory employers that voluntarily participated in the UMWA multiemployer health benefit system and received assignments of beneficiaries from SSA. *See* 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992).

In particular, Congress provided for three $70 million transfers from the UMWA 1950 Pension Plan to be used primarily to pay for unassigned beneficiaries' health care during the Combined Fund's first three plan years. 26 U.S.C. § 9705(a). Congress further provided that in each subsequent year a substantial transfer would be made to the Combined Fund from the Abandoned Mine Land Reclamation Fund ("AML Fund") established under the Surface Mining Control and Reclamation Act of 1977. 26 U.S.C. § 9705(b); 30 U.S.C. § 1232(h). These annual transfers (which are capped at the

amount of interest earned by the AML Fund or $70 million, whichever is greater) may be used only to finance health care for unassigned beneficiaries.

Finally, if the Combined Fund's unassigned beneficiary expenses cannot be entirely defrayed by the transferred amounts, the Coal Act provides for an unassigned beneficiaries premium to be assessed against all assigned operators, in proportion to each such operator's pro rata share of the total number of assigned Combined Fund beneficiaries. 26 U.S.C. § 9704(d). Congress thus concluded that, if necessary, unassigned beneficiaries' health coverage should be financed by those employers that voluntarily participated in the collective decision to provide health care through pooled multiemployer plans and thus contributed to the origins of the health care crisis in the coal industry.

In addition, the Coal Act embodies Congress' decision to close the "loopholes" that previously had allowed employers to avoid their obligations under the NBCWAs. To implement this decision, Congress provided that not only "signatory operators" but also their "related persons" would be liable to pay Combined Fund premiums. Accordingly, Section 9701(c)(2)(A) provides:

> **(2) Related persons.** (A) In general. A person shall be considered to be a related person to a signatory operator if that person is —
>
> (i) a member of the controlled group of corporations (within the meaning of section 52(a)[of the Internal Revenue Code]) which includes such signatory operator;
>
> (ii) a trade or business which is under common control (as determined under section 52(b)[of the Internal Revenue Code]) with such signatory operator; or
>
> (iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.
>
> A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).



Under Section 9704(a) of the Coal Act, "[a]ny related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator." 26 U.S.C. § 9704(a).

### E. Implementing the Coal Act: The Role of SSA

In the Coal Act, Congress directed the Secretary of Health and Human Services to assign eligible Combined Fund beneficiaries to specific employers, which then would have the responsibility to make premium payments under the statute. The Secretary delegated this task to the Commissioner of Social Security.[7]

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[7]Subsequently, Congress enacted the Social Security Independence and Program Improvements Act of 1994, which, among other things, amended the Coal Act to substitute the "Commissioner" for the "Secretary" throughout the statute. Pub. L. No. 103-296, §§ 105(a)(2)(A), 108(h)(9), 108 Stat. 1487-88 (1994).

SSA assigns eligible beneficiaries to signatory operators pursuant to a three-tiered set of statutory priorities. SSA is directed first to assign an eligible beneficiary to a signatory operator that was a signatory to a 1978 or later coal wage agreement and "was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years." 26 U.S.C. § 9706(a)(1).

If an assignment cannot be made under this criterion, SSA is directed to look to an operator that was a signatory to a 1978 or later coal wage agreement and "was the most recent signatory operator to employ the coal industry retiree in the coal industry." 26 U.S.C. § 9706(a)(2). If an assignment still cannot be made, SSA is directed to assign the eligible beneficiary in question to the signatory operator that "employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement." 26 U.S.C. § 9706(a)(3).[8]

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[8]In their brief in opposition (at 4 n.3), respondents attempt to align themselves factually with the petitioner in *Eastern*. The facts in *Eastern*, however, differ substantially from those in this case.

In *Eastern*, neither the assigned operator itself nor any of its statutory related persons was signatory to any coal wage agreement after 1965. Because Eastern did not sign any 1974 or later NBCWA that explicitly referred to retiree health benefits or lifetime coverage, the plurality and Justice Kennedy concluded that Eastern's participation in the UMWA multiemployer plans did not contribute to any legitimate expectation of lifetime health benefits for eligible coal industry retirees. Here, by contrast, it is undisputed that respondent Jericol signed the 1974 NBCWA, and thus joined in the industry-wide commitment to provide lifetime health coverage for eligible retirees and their dependents, including the retirees of Jericol's corporate predecessor. *Eastern*, 524 U.S. at 509.



In applying the statutory priorities set forth in Section 9706, SSA may assign Combined Fund beneficiaries to any signatory operator that remains "in business" or with respect to which a related person remains "in business." 26 U.S.C. § 9706(a). A signatory operator or related person satisfies the Coal Act's "in business" requirement "if such person conducts or derives revenue from any business activity, whether or not in the coal industry." 26 U.S.C. § 9701(c)(7).

To facilitate its assignment task under the Coal Act, SSA developed a Program Operations Manual System ("POMS") that included numerous transmittals of internal instructions, as well as supplemental Coal Act review instructions that were intended to be used in conjunction with POMS. The internal instructions were intended to set forth the policies and procedures to be used by SSA in making assignments under the Coal Act. Supplemental instructions, in turn, were used to clarify or modify earlier guidelines and to provide expanded procedures for processing administrative reviews of Coal Act assignments.

In July 1995, in its Supplemental Coal Act Review Instruction # 4, SSA set forth its specific policy concerning the assignment of beneficiaries to "successors" and "successors-in-interest." The Instruction stated:

> Although there is a provision in the Coal Act for assignments to "successors" and "successors-in-interest" to "related persons," the Coal Act does not specifically provide for assignments to "successors" or "successors-in-interest" to signatory operators. However, the Coal Act does permit assignments to "successors" and "successors-in-interest" to *defunct* (inactive) signatory operators.

Pet. App. 85a-86a. SSA reasoned that "[b]ased on the above, 'successors' and 'successors-in-interest' are another type of 'related person,' and are to be treated as a 'related person' for purposes of making assignments under the Coal Act." *Id.* at 86a. The agency then provided the following definition for Coal Act purposes (*id.*):

> 1. A "successor" (this includes the "successor-in-interest") is one who:
>
> – by purchase, merger, consolidation, or other means of transfer, acquires substantial assets from another; AND
>
> – continues running the same operation in the same location as the former owner with little or no interruption; AND
>
> – uses many of the same employees who worked for the former owner.

**F. Assignments to Jericol**

The underlying facts that led to the Combined Fund assignments at issue here typify corporate transactions that occur on a routine basis in the coal industry. In 1973, Shackleford Coal Company ("Shackleford One"), a signatory to the 1971 NBCWA, sold its operating assets, transferred "all of its rights" under various "contracts and commitments," and sold the right to use the Shackleford name to a newly formed company named Irdell Mining, Inc. ("Irdell"). Pet. App. 10a-11a, 68a-69a. *See also* R. 34-57.[9] Thereafter, Shackleford One changed its name to Kelley & Associates, Inc., and soon dissolved. Pet. App. 10a. After this asset purchase, Irdell changed its name to Shackleford ("Shackleford Two") and immediately started operating in the same location as Shackleford One with almost all of Shackleford One's employees, including members of Shackleford One's management. *Id.* at 10a-11a. *See also* R. 211-212, 217. Shackleford Two also assumed Shackleford One's obligations under the 1971 NBCWA. The secretary of Shackleford One, after becoming vice-president of Shackleford Two, signed the 1974 NBCWA on behalf of Shackleford Two. R. 217. In 1977, Shackleford Two changed its name to Jericol Mining, Inc. R. 212.

SSA relied on the above facts in assigning more than 80 Combined Fund beneficiaries to Jericol based on employment with Shackleford One. Specifically, the agency concluded that because "Jericol adopted use of the Shackleford name, continued to operate under Shackleford's UMWA agreement and otherwise acted as its successor" it was Shackleford One's successor for purposes of assigning Coal Act liability. Pet. App. 12a, 57a. Jericol filed this action, seeking review of SSA's determination.

The district court ruled that, although the Coal Act authorizes assignments of Combined Fund beneficiaries to successors in interest of related persons to signatory operators, its does not authorize such assignments to successors in interest of signatory operators themselves. Pet. App. 74a-78a. A divided panel of the court of appeals affirmed. Pet. App. 23a-36a. Judge Murnaghan dissented. He explained that he

[9] "R." refers to the parties' Joint Appendix in the court of appeals, a copy of which has been lodged with the Clerk of this Court.

"disagree[d] with the majority's theory because it presumes that Congress intended to promote the exact practice that necessitated legislative action in the first place." Pet. App. 42a. In light of the history leading to the Coal Act, Judge Murnaghan found it "unimaginable that Congress could have intended to promote the sale of coal companies to successors who would not be liable for Fund benefits." *Id.* He concluded that "[e]xcluding successors in interest to signatory operators from liability for Fund benefits is plainly inconsistent with Congress's intent in enacting the Coal Act." *Id.* at 44a.

## SUMMARY OF ARGUMENT

The court of appeals erred in concluding that the Coal Act does not permit SSA to assign Combined Fund beneficiaries to a direct successor of an out-of-business signatory operator. The court's conclusion is incorrect for several reasons.

First, the Coal Act's language, although not as clear as it might have been, can be read, as SSA has done, to permit the assignment of Combined Fund beneficiaries to successors of signatory operators. That is so both because the statutory definition of "related persons" is broad enough to include successors in interest of signatory operators and because the statutory term "signatory operator" itself includes, under generally applicable rules of statutory construction, a successor in interest to such an operator. Second, the interpretation adopted by SSA is the only one consistent with both the broad remedial goal of the Coal Act and the congressional decision to provide as wide a funding base as possible for the Combined Fund. Third, the agency's reading of the statute, unlike the interpretation adopted by the court below, is also consistent with the principles of statutory construction, endorsed by this Court, that require statutory language to be read in its proper context, consistent with the specific regulatory scheme of which



it is a part. Fourth, the relevant legislative history provides further support for the interpretation adopted by SSA. Fifth, the statutory interpretation adopted by the panel majority would create a serious possibility that companies liable under the Coal Act would seek to use the device of a successor firm to evade their statutory obligations. If this were to happen, the financial crisis that Congress addressed through enactment of the Coal Act would reemerge. The funding base for retiree health benefits would again begin to shrink with fewer and fewer coal operators responsible for the health benefits of the affected beneficiaries. Finally, an interpretation of the Coal Act that allows assignments to a direct successor to a signatory operator is consistent with the result reached by federal courts when presented with a similar question of statutory construction under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 *et seq.* (1980) ("CERCLA"), another federal statute with a broad remedial goal. Although CERCLA did not expressly address successor liability, every federal court that has considered the question has sustained the propriety of such liability under the Act.

## ARGUMENT

### I. THE PLAIN LANGUAGE AND PURPOSE OF THE COAL ACT SUPPORT THE ASSIGNMENT OF COMBINED FUND BENEFICIARIES TO DIRECT SUCCESSORS TO SIGNATORY OPERATORS

In *Chevron U.S.A., Inc., v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984), this Court explained that the first task in reviewing an agency interpretation of a statute is to determine "whether Congress has directly spoken to the precise question at issue." This initial inquiry into

congressional intent, however, requires more than merely "examining a particular statutory provision in isolation." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000). Statutory language cannot be read in a vacuum because "[t]he meaning – or ambiguity – of certain words or phrases may only become evident when placed in context." *Id.* at 132. "A court must . . . interpret the statute as a symmetrical and coherent regulatory scheme and fit, if possible, all parts into an harmonious whole." *Id.* at 133.

Likewise, the purpose of a statute plays a pivotal role in ascertaining congressional intent. Therefore, "it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest sign to their meaning." *Public Citizen v. U.S. Dep't. of Justice*, 491 U.S. 440, 454-55 (1989) (quoting *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir.)(L. Hand, J.), *aff'd*, 326 U.S. 404 (1945)).

This Court has cautioned that "the plain meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.'" *Public Citizen*, 491 U.S. at 455 (citing *Boston Sand & Gravel Co. v. United States*, 278 U.S. 41, 48 (1928)(Holmes, J.)). This is particularly true where the "naked text" of a statute, when read in isolation, would produce a result "difficult to fathom or where it seems inconsistent with Congress' intention." *Public Citizen*, 491 U.S. at 455.

Here, the panel majority claimed that reading the Coal Act's "related person" provision to include a direct successor to a signatory operator would "require us to completely ignore the statutory context and read the phrase 'signatory operator' in a vacuum." Pet. App. 24a. In fact, however, the panel majority committed the very error about which it warned, when it failed to give adequate weight to the statute's broad remedial purpose,



its expansive scheme of liability, and its relevant legislative history.

As defined in the Coal Act, "related persons" include members of a "controlled group of corporations" that includes the signatory operator, and "a trade or business which is under common control" with the signatory operator. The term also includes a "successor in interest of any person described" elsewhere in the definition. The definition of "related persons" is sufficiently broad to include the signatory operator itself. For example, a signatory operator is, by definition, a member of a controlled group of corporations that includes the signatory operator (just as a father or mother is, by definition, a member of the family that includes that person). At a minimum, the signatory operator itself can qualify as a "person described" in clause (i), (ii), or (iii) of Section 9701(c)(2)(A), in the sense that the signatory operator itself is explicitly mentioned in each of those clauses. Either way, if the signatory operator is considered "related" to itself, or if it is considered a "person described" in one or more of the explicitly enumerated categories of "related persons," a successor to the signatory operator would qualify as a "related person" under the statutory definition.

Although, the majority ruled that this reading of Section 9701(c)(2)(A), adopted by SSA, "would produce a nonsensical definition of 'related person'" (Pet. App. 25a), SSA's interpretation of the statutory provision is not unreasonable, and that interpretation is the only one that produces results consistent with Congress' intent in passing the Coal Act.

Congress recognized that a major cause of the funding problems faced by the existing multiemployer plans was signatory operators going out of business or transferring operations to a new entity, thus rendering their former employees "orphans," and leaving them behind in the collectively bargained multiemployer system to obtain benefits

financed by other employers. To address this situation, Congress imposed Coal Act liability on a broad range of entities, including current and former signatory operators, related persons, and successors to such entities. *See* 26 U.S.C. §§ 9701(c), 9706(a), 9711(c), (g), 9712(d).

By assigning Combined Fund liabilitiy to a successor of a signatory operator, as a "related person" under the statute, SSA properly implemented Congress' intent that the definition of "related persons" be construed broadly to find a specific obligor for as many beneficiaries as possible. The alternative reading adopted below produces illogical consequences that neither respondents nor the panel majority can plausibly explain. It is undisputed that the Coal Act expressly authorizes imposition of Combined Fund liability on successors in interest to related persons of signatory operators. Yet, the court of appeals held, the statute stops short of permitting such liability for successors in interest of signatory operators themselves. There is no evidence that Congress intended to produce this peculiar result, as the only other courts of appeals to address the issue have recognized. *See R.G. Johnson Co., Inc. v. Apfel*, 172 F.3d 890, 895 (D.C. Cir. 1999); *Aloe Energy Corp. v. Apfel*, No. 99-3915 (3d Cir. June 20, 2000), *cert. pending*, No. 00-725 (docketed Nov. 7, 2000).

And that is not the only anomaly created by the decision below. It is undisputed that, where individual employer plans and the 1992 Plan are concerned, the Coal Act explicitly makes successors in interest of signatory operators liable to the same extent as the signatory operators themselves. 26 U.S.C. § 9711(g)(1). There is no logical reason why Congress would have wanted to adopt that approach with respect to individual employer plans and the 1992 Plan but not with respect to the Combined Fund. Nor is there the slightest hint anywhere in the legislative material leading to the Coal Act that Congress had any such intent.



In fact, to the extent that the legislative history of the Coal Act bears on the subject at all, it supports SSA's interpretation. The proposed conference report, introduced by Senator Wallop immediately before passage of the Act, stated that the statute was "designed to allocate the greatest number of beneficiaries in the [collectively bargained] Plans to a prior responsible operator." 138 Cong. Record S17603 (daily ed. Oct. 8, 1992). To accomplish this goal "definitions are intended by the drafters to be given a broad interpretation." *Id.* The report further explained that "because of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related person is intentionally broad." *Id.* at S17604.

Senator Rockefeller, the principal sponsor of the Coal Act, confirmed the correctness of SSA's approach in floor remarks shortly before the Senate's vote on the statute. In the course of clarifying a number of technical points, Senator Rockefeller stated that "the term 'signatory operator,' as defined in new section 9701(c)(1), includes a successor in interest of such operator." 138 Cong. Rec. S17634 (daily ed. Oct. 8, 1992) (statement of Sen. Rockefeller). As the principal sponsor of the Coal Act, Senator Rockefeller's remarks are entitled to special weight. *See, e.g., North Haven Bd. of Education v. Bell*, 456 U.S. 512, 526-27 (1982) (remarks by the sponsor of legislation "are an authoritative guide to the statute's construction"); *Simpson v. United States*, 435 U.S. 6, 13-15 (1978) (same); *NLRB v. Fruit & Vegetable Packers*, 377 U.S. 58, 66 (1964) (same).

The panel majority erred in concluding that Senator Rockefeller's statement offered "limited" guidance because it was "directed at the definition of 'signatory operator' as opposed to 'related person.'" Pet. App. 29a-30a. If anything, Senator Rockefeller's statement demonstrates that the

appropriate result can be achieved here even without regard to the agency interpretation of "related persons" that the court of appeals regarded as too strained. Moreover, Senator Rockefeller's statement concerning Congress' intended meaning of "signatory operator" is completely consistent with general rules of statutory construction applicable to all federal statutes.

Section 9701(c)(1) defines "signatory operator" as "a person which is or was a signatory to a coal wage agreement." Congress, however, did not define "person" in the Coal Act. Title 1 of the U.S. Code provides that the word "person" includes "corporations, companies, associations, firms, partnerships . . . as well as individuals." 1 U.S.C. § 1. Section 5 of Title 1 states that "the word 'company' or 'association', when used in reference to a corporation, shall be deemed to embrace the words, 'successors and assigns of such company or association', in like manner as if these last-named words or words of similar import, were expressed." 1 U.S.C. § 5. Title 1 further provides that the general rules of construction apply in determining "the meaning of any Act of Congress, unless the context indicates otherwise." 1 U.S.C. § 1. Here, nothing in the context of the Coal Act provides any indication that the normal rules of statutory construction should not apply.

When the term "signatory operator" is read using the general provisions of the U.S. Code as a guide to Congress' intended meaning, it is clear that "signatory operator" is a person, which includes a company or association, as well as any successors and assigns of such company or association. Application of these rules of statutory construction supports the conclusion that Congress intended the Coal Act to apply to a successor of a signatory operator. Contrary to the view of the panel majority, this is not a case in which SSA and the Trustees seek to use legislative history to "displace the language of the statute . . . ." Pet. App. 31a. Rather, when that language is read in context, and according to ordinary rules of statutory



construction, the result is fully consistent with the interpretation adopted by the agency and endorsed by the Act's chief sponsor.

The panel majority is also incorrect in drawing a negative conclusion about successor liability to the Combined Fund from the express statutory acknowledgment of such liability in the context of individual employer plans and the 1992 Plan. Pet. App. 31a; 26 U.S.C. § 9711(g)(1). Particularly absent any plausible explanation for why Congress would have wanted to adopt different successor rules for the Combined Fund, and in the teeth of a contrary statement by the Act's principal sponsor, the panel majority accorded excessive weight to the "negative pregnant" kind of argument.

This Court has cautioned that such an argument "should not be elevated to the level of interpretative trump card." *Field v. Mans*, 516 U.S. 59, 67 (1995). Moreover, this Court recognized that such an approach to statutory construction is "weakest when it suggests results strangely at odds with other textual pointers." *Id.* at 75. After considering the purpose and history of the statute and "common sense," this Court concluded in *Field* that, although Congress failed to include a particular requirement in one part of a statute, it did not intend purposely to exclude that requirement from the relevant provision. *Id.* at 67-69.

The same approach should govern here. Congress could not have deliberately intended to insulate direct successors of signatory operators from the reach of Combined Fund liability, while at the same time (a) allowing such liability to pass through to entities with a much more tenuous connection to the signatory operator (*i.e.*, successors to related persons), and (b) expressly imposing 1992 Plan and individual employer plan liability on direct successors to signatory operators. As the D.C. Circuit and the Third Circuit have recognized, the result advocated by respondents undermines the unquestioned purpose of the statute and does so through silence, with no apparent

explanation and no statement from anyone in Congress that this is the intended outcome. The "plain meaning" rule should not be used as a path to such an illogical result.

## II. SSA'S INTERPRETATION OF THE COAL ACT'S "RELATED PERSONS" PROVISION IS ENTITLED TO DEFERENCE

Congress entrusted SSA with the enormous task of assigning more than 100,000 Combined Fund beneficiaries, and dealing with the myriad variety of corporate relationships and employment histories that that task inevitably implicated. SSA, in carrying out its assignment responsibilities, reasonably interpreted the statute to authorize assignments to successors like Jericol when the signatory operator that employed the retirees in question was no longer in business. That interpretation is entitled to substantial deference. *United States v. Mead Corp.*, No. 99-1434 (June 18, 2001), slip op. 8, 9, 15-16 (citing *Skidmore v. Swift*, 323 U.S. 134, 139-40 (1944)); *Chevron*, 467 U.S. at 844. Under this deferential treatment, the agency's determination may be disturbed only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *See* 5 U.S.C. § 706(2)(A).

In *Chevron*, this Court explained that "if a statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 843. In determining whether the agency offers a permissible construction of the statute, "[t]he court need not conclude that the agency construction was the only one it permissibly could have adopted, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.* at 843 n.11 (citing *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 39 (1981)).



Deference has been granted to SSA by courts of appeals in a number of cases concerning the agency's interpretation and administration of the Coal Act. *See Association of Bituminous Contractors, Inc. v. Apfel*, 156 F.3d 1246, 1251-52 (D.C. Cir. 1998)(holding that SSA's interpretation of the term "coal industry," as used in the Coal Act, is reasonable and should be upheld); *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688, 691-93 (3d Cir. 1996) (according deference to SSA's internal guidelines defining Coal Act term "in business."). Such deference also should extend to the agency interpretation of the Coal Act's "related persons" provision.

## III. SSA'S INTERPRETATION OF THE COAL ACT'S "RELATED PERSONS" PROVISION AVOIDS AN ABSURD RESULT NOT INTENDED BY CONGRESS

Even if this Court were to conclude, contrary to what we have argued above, that a literal reading of the statutory language favors respondents, SSA's position still should prevail. This Court has held that a literal reading of statutory language should not be followed if it "will produce a result demonstrably at odds with the intentions of the drafters," *United States v. Ron Pair Enterprises*, 489 U.S. 235, 242 (1989), or if it would lead to an absurd result. *Crooks v. Harrelson*, 282 U.S. 55, 59-60 (1930). That is just what the court of appeals decision would do, as two other courts of appeals have acknowledged in reaching a contrary conclusion on the same issue. *R.G. Johnson*, 172 F.3d 895; *Aloe*, 00-725 Pet. App. 8a.

The panel majority declared that it was "not persuaded that there is no logic to shielding successors in interest to signatory operators from liability but not successors in interest to 'related persons.'" Pet. App. 32a. The majority then suggests that such an odd result may be explained as a means of

promoting the sale of coal companies. *Id.* at 32a-33a. As Judge Murnaghan explained in dissent, however, "excluding successors in interest from liability for retiree benefits does more than *promote* the sale of coal companies; it *actively encourages* the sale of coal companies" as a means of avoiding liability under the Coal Act. Pet. App. 42a. The result, as the dissent accurately observed, is that

> [t]he remaining signatory operators will have to shoulder the burden of paying for the retirees of signatories who leave the business, further raising their costs of doing business; the additional costs will, in turn, encourage more signatories to sell their assets to successors. The ultimate result would be the same dwindling funding base that Congress intended to rectify by passing the Act.

*Id.* at 43a. *See also R.G. Johnson*, 172 F.3d at 895 ("Nor are we impressed by our dissenting colleague's suggestion . . . that Congress could have intended to benefit coal miners by eliminating the impediment to the sale of a coal company posed by the potential liabilities created by the Coal Act.").[10]

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[10]Judge Murnaghan aptly answered respondents' effort to minimize the potential significance of acceptance of their position:

> Some might suggest that coal companies are unlikely to attempt to profit from such a "loophole" in the Coal Act; however, this suggestion ignores the fact that coal companies have a long history of using the tools of successorship to maximize shareholder profits at the expense of workers and retirees.



Not only would the panel majority's approach threaten to re-create the problem that the Coal Act was intended to solve, but it does not even make sense on its own terms. The majority provides no explanation for why Congress was concerned with promoting the sale of coal companies to direct successors, but was not concerned with encouraging the sale of coal companies to successors in interest to related persons. Such a result is not just "somewhat anomalous," as the majority suggests; it is an incongruous outcome that cannot be reconciled with the intent of Congress.[11]

Respondents have attempted to argue that a substantial increase in the number of unassigned beneficiaries will cause no great concern to the government, the Combined Fund, or the retirees themselves. Br. in Opp. 14-15. According to respondents, health care benefits for such unassigned beneficiaries will be financed by funds transferred from the AML Fund, and no one will be harmed. The argument is misguided, for several reasons.

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Pet. App. 43a n.4 (citing Grant Crandall, et al., *Hiding Behind the Corporate Veil: Employer Abuse of the Corporate Form to Avoid or Deny Workers' Collectively Bargained and Statutory Rights*, 100 W.Va. L. Rev. 537 (1998)).

[11]The panel majority likewise offers no explanation for why Congress included successors of signatory operators in Section 9711(g)(1) of the Coal Act, which applies to the UMWA 1992 Benefit Plan and individual employer plans, but allegedly excluded successors of signatory operators from SSA's assignment of Combined Fund beneficiaries. If Congress really intended to encourage the sale of coal companies by excluding successors in interest from Coal Act liability, why would it not have excluded successors from liability to individual employer plans and the 1992 Plan as well?

First, AML Fund monies are not available for the Combined Fund's first three plan years. 26 U.S.C. § 9705(b). If the beneficiary assignments at issue here are declared invalid, the number of unassigned beneficiaries will be increased as of February 1, 1993, and the remaining assigned operators will be assessed additional premiums, as they were when SSA declared several thousand beneficiary assignments void in the aftermath of *Eastern*. Second, even for the years when AML Fund transfers are available under the Coal Act, the amount of money that can be transferred annually is not unlimited. It is capped by the amount of interest earned by the AML Fund or $70 million, whichever is greater. The number of unassigned beneficiaries in the Combined Fund already is sufficient to exhaust, or nearly exhaust, the annual sums available from the AML Fund, and any significant increase in the number of unassigned beneficiaries predictably will lead to the assessment of an unassigned beneficiaries premium against the remaining assigned operators – operators who have no connection to such newly unassigned beneficiaries or their former employers. 26 U.S.C. § 9704(a)(3), (d). Third, even assuming the available AML Fund monies were unlimited, they are public funds, earmarked for an entirely different purpose (namely, the reclamation of abandoned surface mines) under the Surface Mining Control and Reclamation Act of 1977. Congress has chosen in the Coal Act to make some of these funds available for the health care of retired miners and their dependents, but that is no justification for encouraging employers covered by the Act to "dump" their beneficiaries so that their health coverage can be provided through the public fisc.



## IV. SUCCESSOR LIABILITY IN THE CONTEXT OF CERCLA PROVIDES ADDITIONAL SUPPORT FOR SSA'S ASSIGNMENT OF COAL ACT LIABILITIES TO DIRECT SUCCESSORS OF SIGNATORY OPERATORS

In a highly analogous context, several courts of appeals, including the Fourth Circuit, have relied on accepted rules of statutory construction and established concepts of corporate law to hold successors liable for hazardous waste cleanup costs imposed by CERCLA, even though CERCLA does not expressly provide for successor liability. *See United States v. Carolina Transformer Co.*, 978 F.2d 832, 837-38 (4th Cir. 1992); *United States v. Mexico Feed & Seed Co.*, 980 F.2d 478, 486-87 (8th Cir. 1992); *Anspec Co. v. Johnson Controls, Inc.*, 922 F.2d 1240, 1247 (6th Cir. 1991); *Smith Land & Improvement Corp. v. Celotex Corp* , 851 F.2d 86, 91-92 (3d Cir. 1988), *cert. denied*, 488 U.S. 1029 (1989). The reasoning of these courts, when applied to the question of successor liability under the Coal Act, provides additional support for SSA's assignments to Jericol.

Congress enacted CERCLA to "initiate and establish a comprehensive response and financing mechanism to abate and control the vast problems with abandoned and inactive hazardous waste disposal sites." *United States v. R.W. Meyer, Inc.*, 889 F.2d 1497, 1500 (6th Cir. 1989), *cert. denied*, 494 U.S. 1057 (1990). CERCLA, however, does not expressly include successors in its statutory scheme of liability. Instead, in the statutory provision discussing "covered persons," it refers simply to the "owner" and "operator" of any facility at which hazardous substances were disposed. 42 U.S.C. § 9607(a)(1)-(2). Based upon this statutory language, entities have sought to avoid CERCLA liability by arguing that as successors they do

not satisfy the statutory definition of "covered person." This argument has failed.

The panel majority rejected the CERCLA analogy because CERCLA is a "separate" statute "unrelated" to the Coal Act. Pet. App. 35 n.7. This misses the point. Here, as in CERCLA, Congress has enacted a broad, remedial statute. The underlying purpose of both statutes is to identify those entities most responsible for a problem Congress sought to rectify. Just as CERCLA permits a successor to be held liable because "Congress has emphasized funding by responsible parties," *Smith Land & Improvement Corp.*, 851 F.2d at 91, so too does the Coal Act permit assignment of Combined Fund liability to a successor to a signatory operator because Congress emphasized funding by the "persons most responsible for plan liabilities." Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037 (codified in 26 U.S.C. § 9701 (historical note)(1994)). Here, the benefits of the miners' labor inured to Jericol as a successor to Shackleford, and it is the "most responsible party" to shoulder the Combined Fund liability.

## CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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